IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.Rev.Pet.No. 882 of 2000()

CRA.105/2000 of SESSIONS COURT, MANJERI
CC.219/1999 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM
.....

REVN. PETITIONER: (AAPPELLANT- ACCUSED NO.1)

V.MOHAMMED, SON OF RAYEEN MOHAMMED,
VARIKALAYIL HOUSE NEDIYIRIPPU.

BY ADV. SRI.T.K.VENUGOPALAN
SRI.SHIBU JOSEPH

RESPONDENT: (RESPONDENT- COMPLAINANT)

STATE OF KERALA, REP.BY
THE CIRCLE INSPECTOR OF POLICE,
KONDOTTY.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/10/2007, ALONG WITH CRRP NO. 946 OF 2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

CRRP. NO.882/2000

ORDER ON CRL.MP. 4676/2000 IN CRRP. NO.882/2000

DISMISSED

05.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NOS. 882 & 946 OF 2000

DATED THIS THE 5TH OCTOBER 2007

ORDER

The revision petitioner in Crl.R.P.No.882/2000 is the first accused and the revision petitioner in Crl.R.P.No.946/2000 is the second accused in C.C.No.219/1999 of the Court of the Judicial Magistrate of First Class, Malappuram with respect to the offences under Section 379 read with Section 34 I.P.C and who stand convicted along with A3 and A4 to undergo rigorous imprisonment for three years. No revision petition appears to have been filed by accused 3 and 4. The prosecution case is that in the intervening night of 2-5-1999 and 3-5-1999 the accused committed theft of jeep bearing registration No. KL-10-C 1394 which was parked in the shed in House No. VIII/130 of the de facto complainant.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 7 and Exts.P1 to P9. PW1 is the de facto complainant who has testified as to the theft of jeep. It was he who rendered the F.I.S, i.e. Ext.P1 on 5-5-1999 at 9.30 a.m. PW2 is the scene mahazar witness and PW3 is the witness to the seizure mahazar of the vehicle that took place on 8-5-1999 at 2.45 a.m. at Kizhissery Angadi which is within the jurisdiction of Kondotti police station . The

alleged theft was committed at Chirayinchungam which is also a place at Kondotty. PW3 has testified in support of the prosecution version that he witnessed the seizure of the vehicle involved by the police who was scouting the area of patrol duty and that the vehicle was intercepted and taken into custody. PW4, the Head Constable who registered the F.I.R. Pws.5 and 7 are the A.S.I. and the Circle Inspector of Police respectively who were in the police patrol party.

3. Counsel for the revision petitioners has pointed out a number of discrepancies in the prosecution evidence which render the prosecution version suspicious, it is contended. The vehicle was seized on 8-5-1999. There was a delay of about three days in reporting the matter to the police. Explanation provided by PW1 is that he was searching for the vehicle. It is pointed out that the above explanation is hardly convincing. Another discrepancy pointed out is that as per Ext.P4 seizure mahazar, two number plates of the vehicle were seized from the vehicle itself and the different registration number was written over the bumper. It is pointed out that although both number plates were seized the same are not produced before the court. It is also pointed out that the version of PW3 on the one hand and Pws.5 and 7 on the other varied substantially with respect to the actual act of seizing the vehicle. PW1 has deposed that he was

driving his own jeep at the time and the police intercepted him and he showed the records of the jeep to the police and that he was permitted to proceed. Subsequently the seized jeep overtook his vehicle and went ahead and after some time he saw that the jeep involved being stopped by the police etc. On the other hand, the version of Pws. 5 and 7, the A.S.I. and the Circle Inspector is that a jeep came from the opposite direction and that they signalled the vehicle to stop and that they intercepted the same and the vehicle was taken into custody. Evidently there is a material contradictions in the versions of PW3 and that of Pws.5 and 7. It is also pointed out that the registration certificate etc. of the jeep were not produced so that the ownership of the vehicle stands not established. It is also pointed out that in the F.I.R. the colour of the jeep is mentioned as light green whereas as per Ext.P4 seizure mahazar the colour of the jeep is light grey. PW1 has denied that he has mentioned in the F.I.S. that the colour of the jeep is light green. I find that the above discrepancy stands not explained. The contradictions pointed out by the defence has been brushed aside by the courts below observing that the same are minor which does not appear to be so. I find that the discrepancies and inconsistencies pointed out by the counsel for the revision petitioners are somewhat material. In the circumstances, I

find that the accused is entitled to benefit of doubt. The conviction and sentence imposed on the accused are set aside. The accused are acquitted. The revision petitions are allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NOS. 882 & 946
OF 2000

ORDER

5-10-2007